

In the United States Circuit Court
FOR THE DISTRICT OF *New Jersey.*

AMERICAN GRAPHOPHONE COMPANY

vs.

*The United States
Phonograph Co., et al*

In Equity.

Affidavit of Edward D. Easton.

DISTRICT OF COLUMBIA, ss:

EDWARD D. EASTON, being duly sworn, deposes and says:

I am a resident of Washington, D. C.; am general manager of the American Graphophone Co., and am President of the Columbia Phonograph Co. The latter company was organized in 1889, under authority of Jesse H. Lippincott and the North American Phonograph Co., to use, lease, and sell graphophones and phonographs in Maryland, Delaware, and the District of Columbia.

I have been familiar with the construction and use of instruments of the kind named above ever since they were first put upon the market, have used them daily in my work since that time, and for many years my attention has been devoted to the business of manufacturing and disposing of such instruments. This business has

JACKSON W. ALWARD, being duly sworn says. That
on the 14th. day of November 1894, he called on Walcutt,
Miller & Company, a firm which is composed of the defendants
at their salesrooms at No. 120 East 14th. Street in

*Included in Amer Graph Co.
vs.
Cleveland Walcutt, et al.
U.S. Circ Ct. B. Dist / N.Y.
#5966*

taken me to many different parts of the country, and brought me into contact with most of the persons engaged in a similar business. I am conversant with every type of machine of this kind that has ever been put upon the market.

Although differing in name, phonographs, as now manufactured, and graphophones are alike in all essential respects. The prospectus issued by the North American Phonograph Co. and Jesse H. Lippincott, printed for private circulation, a copy of which is in my possession, thus stated the fundamental characteristics of both these machines :

"The foundation principle consists in the cutting of minute impressions upon the surface of a small wax cylinder by means of a tiny cutting instrument actuated by sound-waves, and in these same minute impressions or punctures afterwards setting in vibration a small diaphragm attached to a delicate needle-point," &c.

This operation of "cutting" in a wax cylinder is the mode of operation of every talking-machine that has ever been put upon the market, to my knowledge, and the introduction of such machines, whether known as phonographs or graphophones, was begun and, for a long time and everywhere in this country, continued, under the patents granted to Bell and Tainter, May 4, 1886, now involved in this suit. Since the grant of these patents, although the machines have been greatly improved in matters of detail, the essential principles have not been changed up to the present time.

Among the characteristics which are essential or very important in the practical recording and reproduction of sounds, I would particularly mention the following, quoting from the claims of letters patent No. 341,214 :

1. The method of forming a record of sounds by impressing sonorous vibrations upon a style, and thereby cutting in a solid body the record corresponding in form

to the sound-waves, in contradistinction to the method of forming sound-records by indenting a style, or cutting a strip by vibrating disk-cutter, substantially as described.

3. The vibratory cutting-style, substantially as described.

6. A vibratory cutting-style, tablet or other solid body in which a cut, and mechanism for supporting it with reference to the said style, substantially as described.

7. A sound-record consisting of a body having its surface cut out by lines of irregular or varied form, representing sound-waves, substantially as described.

9. The method of forming a sound-record which consists in engraving or cutting a wax-like composition, substantially as described.

17. The sound-record in the form of a groove with sloping walls cut into a solid body, substantially as described.

Also the following from patent No. 341,214 :

1. A recording tablet for a talking-machine, in the form of a hollow cylinder provided with a mechanism for receiving the sound-waves, substantially as described.

4. A tubular self-sustaining sound and sonorous vibrator, substantially as described.

7. A tablet-holder journal, and detachable from its support, that a tubular tablet can be used in combination with the sound-operating mechanism for causing a reproducer to trace a spiral line, substantially as described.

Many other claims of the same nature are made by the defendant, all talking instruments of the same kind as those handled by the defendant, and of chief importance.

ts of the country, and
most of the persons en-
conversant with every
has ever been put upon

phonographs, as now
are alike in all essen-
issued by the North
Jesse H. Lippincott,
copy of which is in my
amental characteristics

consists in the cutting
surface of a small wax
ing instrument actuated
me minute impressions
n vibration a small dia-
needle-point," &c.

in a wax cylinder is the
king-machine that has
to my knowledge, and
es, whether known as
was begun and, for a
is country, continued,
ll and Tainter, May 4,
Since the grant of
ines have been greatly
e essential principles
present time.

h are essential or very
ing and reproduction
ention the following,
patent No. 341,214 :
ord of sounds by im-
a style, and thereby
corresponding in form

to the sound-waves, in contradistinction to the formation
of sound-records by indenting a foil with a vibratory
style, or cutting a strip by vibrating it against a revol-
ving disk-cutter, substantially as described.

3. The vibratory cutting-style of a sound-recorder,
substantially as described.

6. A vibratory cutting-style, in combination with a
tablet or other solid body in which the record is to be
cut, and mechanism for supporting the same and mov-
ing it with reference to the said style, substantially as
described.

7. A sound-record consisting of a tablet or other solid
body having its surface cut or engraved with narrow
lines of irregular or varied form corresponding to sound-
waves, substantially as described.

9. The method of forming a sound or speech record
which consists in engraving or cutting the same in wax
or a wax-like composition, substantially as described.

17. The sound-record in the form of an irregular
groove with sloping walls cut in solid material, sub-
stantially as described.

Also the following from patent No. 341,288 :

1. A recording tablet for a phonograph, consisting of
a hollow cylinder provided with a wax or wax-like coat-
ing for receiving the sound-record, substantially as
described.

4. A tubular self-sustaining tablet for recording
sounds and sonorous vibrations, substantially as de-
scribed.

7. A tablet-holder journaled in bearings at both ends,
and detachable from its support at least at one end, so
that a tubular tablet can be slipped over the same, in
combination with the sound-recorder or reproducer, and
operating mechanism for causing the said recorder or
reproducer to trace a spiral line on the tablet, substan-
tially as described.

Many other claims of these patents are employed in
all talking instruments of the present day, including
those handled by the defendants, but I regard the above
as of chief importance.

JACKSON W. ALWARD, DEPT. OF COMMERCE, U.S. DEPT. OF COMMERCE

on the 14th day of November 1894, he called on Mr. ALWARD,

I am familiar with the machines and appliances put upon the market by the defendants in this suit. The machines handled and sold by them are the Standard Edison Phonograph, such as heretofore paid royalty to the American Graphophone Company, and are identical in all respects with the machine introduced in evidence in the suits brought against the Columbia Phonograph Company and the Edison Phonograph Works, known therein as "Complainant's Exhibit Modern Phonograph—E. L. White, Examiner in Chancery," and marked on its inscription plate, "North American Phonograph Company, New York, No. 5185." This machine in operation employs the subject-matter of each of the claims quoted above, and of others of the same patents.

The defendants make a speciality of the sale of cylinders or blanks for use on phonographs, and these cylinders, both with musical and other records cut or engraved therein, and without records, constitute an important article of commerce. The cylinders or blanks used on the graphophone and phonograph are substantially alike. Both are self-sustaining tubular records having a wax or wax-like recording surface, in which the sound record is cut or engraved in the form of a groove with sloping walls, as specified in certain of the above-quoted claims. That made for the graphophone has a pasteboard foundation, while that used on the phonograph is thick and heavy and requires no foundation. In the year 1893 the defendants proposed to enter upon the manufacture of phonograph cylinders, and, recognizing and being advised by their counsel, as I am informed, that the patents owned and controlled by the American Graphophone Company covered such cylinders, opened negotiations with that company for a license. These negotiations were opened by a letter from defendant's counsel, Mr. George C. Frelinghuysen, dated April

25, 1893, copy of which is "Exhibit A." The but mainly by person Emerson, and Mr. the preparation of Mr. Frelinghuysen of this draft of a letter "Exhibit B."

The advance fee not paid by the defendant 10 I received a letter copy:

"E. D. EASTON,
"Can you not
fee? Mr. Hayes
made no provision
left unexpectedly

Correspondence continued until actually broken off that they had manufacture of

Nevertheless engaged large cylinders of iron to manufacture which they are

The business States Phonograph organized in of George and from its company itself sources, and

25, 1893, copy of which is hereto annexed and marked "Exhibit A." They were continued partly in writing but mainly by personal interviews between myself, Mr. Emerson, and Mr. Howard G. Hayes, and progressed to the preparation of a license drafted and submitted by Mr. Frelinghuysen as satisfactory to his clients. Copy of this draft of a license is hereto annexed and marked "Exhibit B."

The advance license fee of \$1,000 agreed upon was not paid by the defendants on July 1, 1893, and on July 10 I received a telegram, of which the following is a copy:

"E. D. EASTON, Washington, D. C.:

"Can you not give us until August 1st to pay license fee? Mr. Hayes away and I don't know where. He made no provisions for the money before leaving, and left unexpectedly.

"V. H. EMERSON."

Correspondence regarding the remittance was continued until August, 1893, but negotiations were eventually broken off, the defendants giving as their reason that they had decided finally not to engage in the manufacture of phonograph cylinders.

Nevertheless the defendants have been and are now engaged largely in the business of using and selling cylinders of identically the same sort as they proposed to manufacture under the patents here in suit, and which they acknowledged were covered by said patents.

The business carried on under the name of the United States Phonograph Company, which company was organized in 1883, appears to be entirely in the hands of George E. Tewksbury and Victor H. Emerson, and from inquiries I have made I believe the company itself to be practically without capital or resources, and existing merely as a business convenience.

JACKSON W. ALFORD, being duly sworn, deposes that
on the 11th day of November 1894, he called on Webster,
Miller & Company, a firm which is composed of the defendants
herein, at their salesrooms at No. 120 East 14th Street in

